Governance Issues and Participant Rights in Olympic Sport

Chapter 13

MANAGEMENT CONTEXT	MAJOR LEGAL ISSUES	RELEVANT LAW	ILLUSTRATIVE CASES
Authority of governing bodies	Private right of action	Amateur Sports Act	*Sternberg*
	Judicial/arbitral review	Law of private associations	*Harding*
Regulation of events	Events included in program	Olympic Charter, federal antidiscrimination laws	*Martin*
	Team/nation participation	U.S. Constitution: Amateur Sports Act	*Spindulys, DeFrantz*
	Selection of host cities	IOC procedures	
	Sponsorship/advertising: use of Olympic trademarks	Olympic Charter, Amateur Sports Act, Lanham Act	*San Francisco Arts & Athletics, Intelicense*
	Security measures	4th Amendment	
Regulation of participants	Disputed competition outcomes	IOC rules	*Yang Tae-Young*
	Amateurism	Olympic Charter	
	Drug testing	WADA Code/IF rules	*C. v. FINA, Cilic, Medvedev, Sharapova*
	Sex tests	IOC Medical Commission policy, sex discrimination laws	*Semenya*
	General competition rules	IOC rules	*Pistorius, Walton-Floyd*
	Disciplinary action Duty of care/Special Relationship	Law of private associations Tort/Negligence	*Samoa NOC, Harding, Pliuskaitis* *Brown*

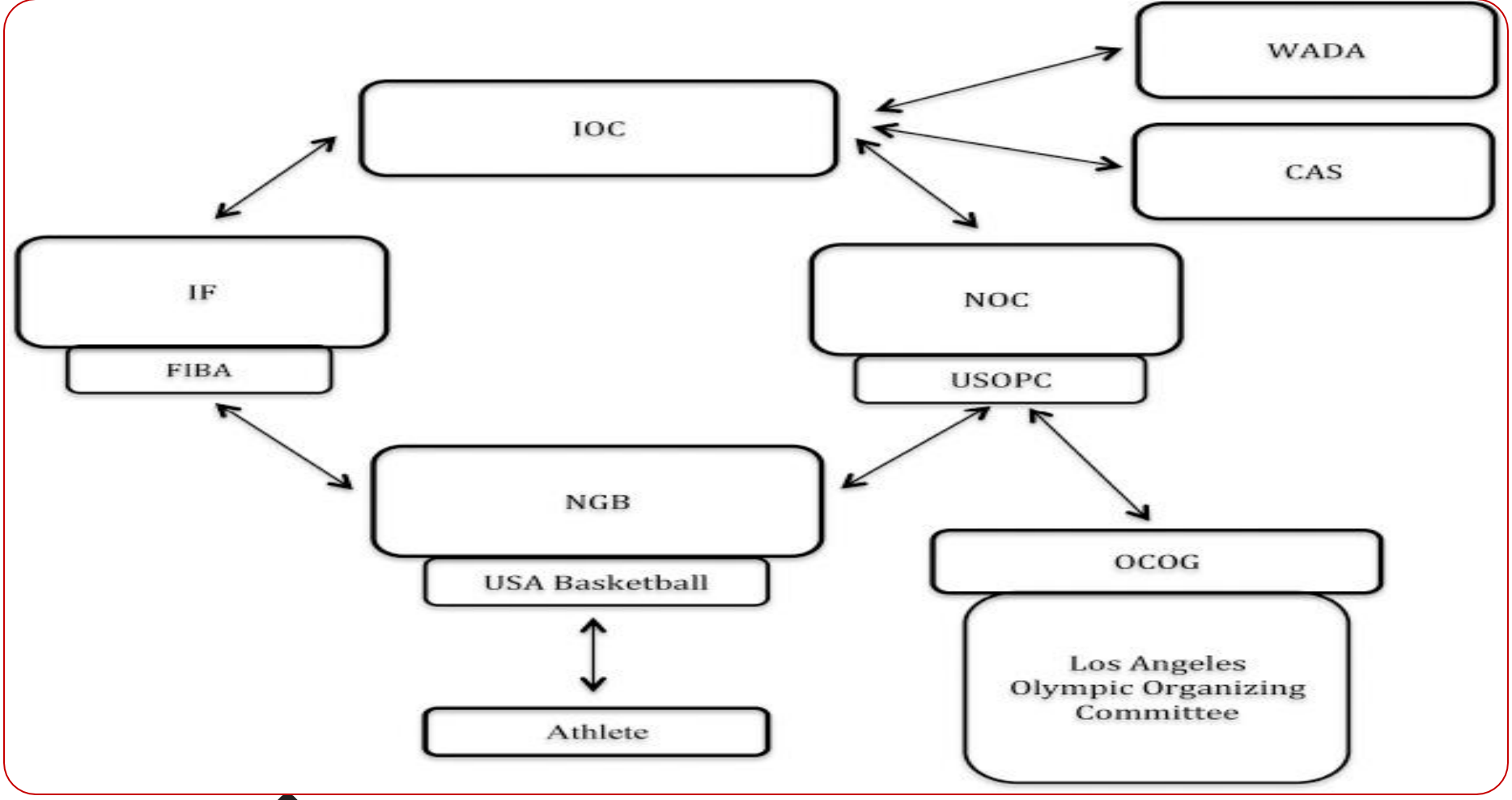
Management Contexts, Relevant Laws, and Cases

Purposes of the Olympic Movement

- Concept of Olympism
  - Harmonious development of humankind
  - Contribute to world peace
  - Educate youth through sport
  - Develop mutual understanding and a spirit of friendship and fair play
- Also—generate revenue
  - Broadcast rights
  - Ticket sales
  - Sponsorships and other marketing and licensing
- Manage complex governing structure involving international agreements and treaties

Major Governing Bodies in the Olympic Movement

- International Olympic Committee (IOC)
- National Olympic Committees (NOCs)
- International Olympic Federations (IFs)
- National Governing Bodies (NGBs)
- Organizing Committees for the Olympic Games (OCOGs)



General Governance Structure for Olympic Governing Bodies

International Olympic and Paralympic Committees

IOC and IPC are private non-governmental organizations

IOC administration and oversight

- 15-member Executive Board (President, 4 Vice-Presidents, 10 other members), 4-year terms with max of 2 terms
- 102 members

IPC administration & oversight

- 14-member Governing Board elected every 4 years with max of 3 terms
- 200+ members

Exclusive ownership of all rights related to organization, marketing, broadcasting

Dispute resolution submitted to Court of Arbitration for Sport (CAS)

Other Governing Bodies (as of 2020)

206 NOCs

40 IFs

50 NGBs in the United States

As many as four different OCOGs may be operating at any one time for different Olympic Games.

Olympic Movement Partners

World Anti-Doping Agency (WADA)

Court of Arbitration for Sport (CAS):

- Resolve legal disputes in international sport through arbitration or mediation
- Recent decisions can be seen on their website
- 957 requests for arbitration in 2020

Dispute Resolution Processes of the CAS

- Ordinary arbitration for legal disputes
- Appeals arbitration for appeals from IFs
- Consultation for advisory opinions on legal issues
- Mediation

Competitive Advantage Strategies
Relationships of Governing Bodies

Investigate and understand the interrelationships among governing bodies and their regulations.

Watch for inadvertently disregarding important regulations, due to your organization's relationship with another governing body.

U.S. Olympic Organizations and the Amateur Sports Act of 1978

Revised the USOC's federal charter

- Gave the USOC exclusive jurisdiction and authority over U.S. participation and representation in the Olympic Movement
- Authority to recognize NGB's, determine eligibility, and resolve disputes

Amended in 1998: the Ted Stevens Olympic and Amateur Sports Act (OASA)

Renamed USOC to USOPC in 2019:

United States Olympic and Paralympic Committee (USOPC)

Legal Review

- Since OASA, the IOC no longer strictly adheres to the principle of amateurism—one of the principles of the Olympic Movement since the beginning.
- In your opinion, does having professional athletes competing make the Games better or worse?

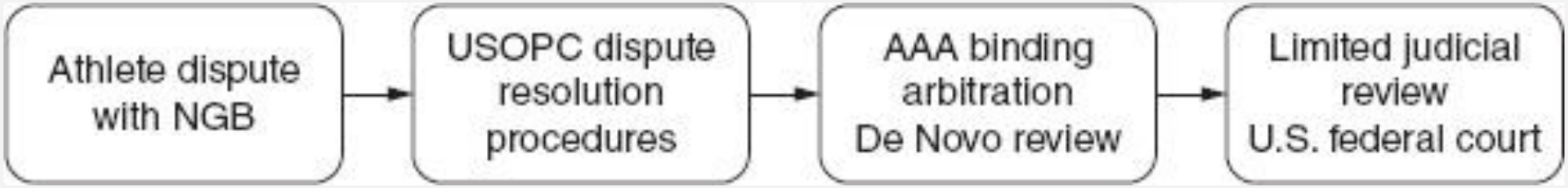
Dispute Resolution and the USOPC

- USOPC is not a state actor, thus, the governing documents control most disputes
- Separation of government from Olympic governing bodies is also required under the Olympic Charter
- ASA requires USOPC to adopt internal dispute resolution procedures

Exception is federal discrimination claims and due process claims

Dispute Resolution Process

- Dispute Resolution Process is rarely subject to external judicial review
- Most courts have held that OASA preempts judicial review


Athlete dispute with NGB
USOPC dispute resolution procedures
AAA binding arbitration De Novo review
Limited judicial review U.S. federal court

Limited Judicial Review

- Courts are reluctant to intervene, but will review cases when other remedies have been exhausted
- Willing to rule on whether USOC or an NGB:
  - Has followed its own rules
  - Has provided appropriate due process
  - Was not arbitrary or capricious

Administration of the Games

- Sports & events programs
- Team/nation participants
- Disputed competition outcomes
- Selection of host cities
- Protection of intellectual property
- Security measures

Regulation of Events—Who Decides What?

Sports and events program:

- IOC and IPC

Which countries compete:

- OCOGs (e.g. LA2028; Los Angeles Organizing Committee)

Who competes (individual competitor or team):

- a country's NOC (e.g. USOPC)

Host cities:

- IOC makes ultimate decision

Sponsorship, advertising, social media:

- IOC and NOCs

Security measures:

- NOCs and OCOGs

Security Measures

- New technologies: Facial-recognition software and drone surveillance
- Question: Is the combination of highly invasive surveillance technology and information-gathering functions to search sports spectators on a suspicionless basis an illegal search under the Fourth Amendment?

What is your opinion?

Reforms to the Host-City Selection Process

- Prohibition of visits by IOC members to candidate cities
- Media access to IOC Session meetings
- Mandatory publication of sources of revenue and expenditures

New Host City Selection Process

- **Invitation Phase**
  - Non-formal commitment to submit bid
  - One year dialogue to discuss benefits and requirements
  - Cities are invited to commit to Candidature Process
- **Candidature Process**
  - City become official candidate city
  - 2-year process
  - Evaluation Commission submits final report and Executive Board compiles final slate of candidate cities to be elected at the Host City Election by the IOC members

Competitive Advantage Strategies Regulatory Actions of Governing Bodies

01

Become familiar with your sport governing body's rules for submitting protests and appeals.

02

Familiarize yourself with the decision-making standards of the CAS.

03

Communicate to coaches the message that athletes can and will be punished for doping.

04

Advise all staff about which governing bodies have the authority to regulate their conduct.

Regulation of Participants & Participant Rights

Amateurism	Disciplinary Actions	Eligibility
Sex Testing	Competition Rules	Drug Testing
Expressive Activities	Marketing Activities	Duty to Protect Athletes

Amateurism

- Amateurism originally embedded in the Olympic Movement
- IOC removed the word "amateurism" from Olympic Charter in 1974
- Abandoned amateurism principle in 1986 opening the doors for professional athletes to compete
  - Many countries provide monetary bonuses, travel, training expenses
  - Athletes also can earn significant $$ from endorsements and sponsorships

Eligibility & Competition Rules

- Competition Rules define
  - How sport is to be played
  - Scoring methods
  - Eligibility criteria
  - Equipment specifications
- Eligibility challenges raise issues related to
  - Burden of proof
  - Due process and basic fairness provided in bylaws and governing documents

Drug Testing

- Independent International and National Agencies Created
  - World Anti-Doping Agency
  - United States Anti-Doping Agency (USADA)
- Arbitration available to sanctioned athletes and appeals to CAS:
  - Strict liability standard
  - No significant fault standard
- Sanctions for violations:
  - Disqualification, warnings, fines, and bans/suspensions

Sex Testing

- Began in 1968 to ensure competitors in women's events were female
- Controversially applied to transgender athletes and female athletes with hyperandrogenism
- Most prominent examples are in the sport of track and field
  - IAAF (World Athletics) and IOC continue to introduce new regulations
    - 2013 Hyperandrogenism Rule
    - 2018 DSD regulations
  - Legal challenges from impacted athletes also continue

Marketing Activities (Rule 40)

- **Rule 40:** ***Competitors, team officials and other team personnel who participate in the Olympic Games may allow their person, name, picture or sports performances to be used for advertising purposes during the Olympic Games in accordance with the principles determined by the IOC Executive Board***
- IOC's official position:
  - It "actively encourages and supports athletes and other accredited persons at the Olympic Games to take part in social media and to post, blog, and tweet their experiences."
- Rule 40 relaxed in 2020 and each NOC has adopted advertising and marketing guidelines for athletes
  - 2020/2021 guidelines the most permissive yet, but still limit the number and placement of promotional activities

Expressive Activities (Rule 50)

- **Rule 50: *"No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas."***
- Intended to provide a framework to protect the neutrality of sport and the Olympic Games
- Athletes can be disciplined and even suspended or placed on probation for violations
- Protest movements from 2020 and 2021 continue to criticize scope of Rule 50

Duty to Protect Athletes

Growing concern for athlete safety and protection from abuse led Congress to enact Safe Sport Act of 2017

Legal precedents still evolving whether NGBs and USOPC have a legal duty to protect athletes

Legal Review

- What are your thoughts on transgender individuals participating in the Olympic Games?
  - If an athlete has undergone sex reassignment surgery, should they be permitted to compete based on their new gender identity?
- What are your thoughts on a runner who is a double-amputee competing while wearing prosthetic devices?

Competitive Advantage Strategies
Contracts with Governing Bodies

- If you work for a company that has a contract with an NOC or NGB, find out how laws and the interrelationships among governing bodies may affect business decisions.
- If you work in social media/marketing, be aware of the prohibition of unauthorized use of Olympic marks and the name "Olympics," and do not post photos or videos of the Games.